IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 887 of 1993()

OPMV.1764/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

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APPELLANT: PETITIONER

VARGHESE, S/O.MATHEW,
GOPURATHINKAL HOUSE, ANGAMALY SOUTH.

BY ADV. SRI.K.PRABHAKARAN
SRI.JOSE THETTAYIL

RESPONDENTS: RESPONDENT

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1. V.K.HAMZA, PALAKKAMATTAN,
PUTHU PALLIPURAM,
CHANGAMPUZHA, NAGAR, EDAPPALLY.

*** 2. MOHAN, S/O.KESAVAN, THEYYAMANGALATH HOUSE,**
AYYARKULANGARA, KARA, NADUVILA VILLAGE,
VAIKOM KARA. (DELETED)

3. NATIONAL INSURANCE CO. LTD.,
M.G.ROAD, COCHIN 11.

*** 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER ORDER DT.23.3.2000 ON CMP. 1848/2000 IN MFA 887/1993.**

BY ADV. SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/ 05 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, JUDGE.

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M.F.A. No. 887 OF 1993

Dated this the 28th day of May, 2007

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JUDGMENT

The claimant in O.P.(M.V). No.1764/1990 on the file of Motor Accidents Claims Tribunal, Perumbavoor is the appellant. The appellant sustained injuries in a road traffic accident at about 5.30 p.m. on 7.10.1988. The case of the appellant was that while he was riding his scooter bearing registration No. KEC 6705 through the National Highway, a taxi car bearing registration No. KLA 5454 driven by the 2nd respondent came in a rash or negligent manner and hit against the rear side of the appellant's scooter and he sustained injuries. He filed a petition claiming compensation of Rs.50,000/-. Insurer alone contested the matter. The Tribunal found that the petitioner sustained injuries in a road traffic accident and he is entitled to get compensation. But it was held that the petitioner also contributed to the accident and hence liability is to be apportioned in the ratio of 50:50. The evidence on record shows that the road at the place of accident lies north-south. Both vehicles were proceedings from north to south i.e., through the eastern side of the road. The court below found that the appellant at the time of evidence had admitted that the right bumper of the car hit against the scooter. So it was presumed that scooter must have been on the wrong side and the appellant might have been riding the scooter through the middle of the road. The Tribunal also held that there was another possibility.

It was held that the car might have served to the eastern side of the road in such a way to hit the rear side of the scooter. The court below infact assumed that the appellant must also contributed. The appellant alone gave evidence. He deposed that the accident occurred due to the negligence of the driver of the car. The insurer did not adduce any evidence to discredit his evidence. The insurer did not adduce any oral or documentary evidence. Considering all aspects of the matter I am of the view that the Tribunal was not justified in finding fault with the rider of the scooter. So I hold that the driver of the car alone was liable for the accident and the entire compensation is to be paid by the owner and driver of the car. The car was covered with a valid insurance policy. So the 3rd respondent is liable to pay the entire amount awarded. But the appellant is entitled to get only 7% interest for the additional compensation awarded by this court.

In the result, the appeal is allowed in part. The appellant is allowed to realise an amount of Rs.2308/- (Rs.4616-2308) as additional compensation from R1 to R3. The 3rd respondent is directed to deposit the enhanced compensation with interest at the rate of 7% from the date of petition till realisation. The appellant can withdraw the entire amount on deposit.

K.PADMANABHAN NAIR
JUDGE.

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